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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,435	02/27/2004	Adrian Buckley	1578.702 (11609-US-PAT)	5695
44298	7590	01/06/2009	EXAMINER	
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			2617	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/789,435

**Applicant(s)**

BUCKLEY ET AL.

**Examiner**

SAM BHATTACHARYA

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,6,8-10,13,16,17,19-24,26-29 and 31-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1,5,6,8-10,13,16,17,19-24,26-29 and 31-38 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, 8-10, 13, 16, 19-23, 24-28, 31, 33-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorenbosch et al. (US 2004/0028009) in view of H'mimy et al. (US 6,442,151) and Friman et al. (US 6,741,858).

Regarding claims 1, 10, 21, 22 and 26, Dorenbosch discloses a mobile device for wireless channel selection (see FIGS. 1 and 2), the mobile device 103 communicating with a wireless network, including a first transceiver 808 for creating a first connection with the wireless network over a first channel; a second transceiver 809 for creating a second connection with the wireless network over a second channel; a memory, the memory 815 containing a list of candidate channels and their characteristics and containing service criteria associated with a service; and a switching module 811 coupled to the first and second transceivers, the switching module directing the first transceiver to create the first connection, establishing the service between the mobile device and a remote point over the first connection, selecting the second channel, and directing the second transceiver to create the second connection. See also FIG. 8, paragraph 16, lines 1-12, and paragraph 19, lines 1-21.

Dorenbosch fails to disclose that the switching module reads the list of candidate channels and compares their characteristics against the service criteria to select the second

channel and wherein the switching module switches the service from the first connection to the second connection.

However, in an analogous art, H'mimy et al. discloses a channel assignment system that includes a switching module 30 that reads the list of candidate channels and compares their characteristics against the service criteria to select the second channel and wherein the switching module switches the service from the first connection to the second connection. See FIG. 1, col. 3, lines 23-35 and col. 6, lines 18-34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system in Dorenbosch by incorporating this feature as taught by H'mimy for the purpose of ensuring that the optimal channel is selected for communication so that communication is not dropped.

Dorenbosch-H'mimy failst to disclose that the characteristics of the second channel do not meet the service criteria, and adapting the service to the characteristics of the second channel.

However, in an analogous art, Friman discloses this feature the text of claims 1 and 7. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system in Dorenbosch-H'mimy by incorporating this feature as taught by Friman for the purpose of achieving an optimum data rate to be used for communication.

Regarding claims 5, 16, 23, 28, 31 and 35, Dorenbosch discloses that the characteristics include bandwidth and the service criteria include a minimum bandwidth requirement. See paragraph 21, lines 1-16.

Regarding claims 8, 19, 34 and 38, Dorenbosch discloses that the step of creating a second connection includes steps of selecting the second channel and requesting resources from the wireless network. See paragraph 17, lines 1-19 and pargraph18, lines 1-21.

Regarding claims 9 and 20, Dorenbosch discloses that the wireless network includes an anchor point and wherein the first connection includes a first path to the anchor point, and wherein the step of creating a second connection includes establishing a second path to the anchor point. See paragraph 25, lines 1-22.

Regarding claim 13, 33 and 37, Dorenbosch discloses that the switching module directs the first transceiver to terminate the first connection once the service is switched to the second connection. See paragraph 23, lines 1-20.

3. Claims 6, 17, 24, 29, 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorenbosch in view of H'mimy et al. and Friman, and further in view of Boudreaux (US 6,466,556).

Regarding claims 6, 17, 24, 29, 32 and 36, Dorenbosch-H'mimy-Friman fails to disclose that the characteristics for channel evaluation include latency and the service criteria include a latency requirement.

However, in an analogous art, Boudreaux discloses a handover method in which service criteria for channel evaluation include a latency requirement. See col. 1, lines 47-60. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system in Dorenbosch-H'mimy-Friman by including this feature taught in Boudreaux for the purpose of compensating for rapid fluctuations in delay and loss.

***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Bhattacharya whose telephone number is (571) 272-7917. The examiner can normally be reached on Weekdays, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sb

/Sam Bhattacharya/  
Primary Examiner, Art Unit 2617